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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/744,799	04/03/2001	Paulus Jacobus Antonius Sondermeijer	I/98404 US	4801
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31846	7590	08/12/2003
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405 STATE STREET
PO BOX 318
MILLSBORO, DE 19966

EXAMINER

SCHEINER, LAURIE A

ART UNIT

PAPER NUMBER

1648

DATE MAILED: 08/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Enclosed are the copies of the last Office Action,
remailed, due to an incorrect address.

THE PERIOD FOR RESPONSE OF 1(one) MONTHS SET IN SAID
OFFICE ACTION IS RESTARTED TO BEGIN WITH THE DATE OF THIS
LETTER.

Carolyn E. Thomas
Carolyn E. Thomas,

Legal Instrument Examiner, Art Unit 1648



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7590

06/30/2003

William M Blackstone
Akzo Nobel
1300 Piccard Drive Suite 206
Rockville, MD 20850-4373

EXAMINER

FOLEY, SHANON A

ART UNIT

PAPER NUMBER

1648

DATE MAILED: 06/30/2003

Remailed 08/12/03

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/744,799

Applicant(s)

SONDERMEIJER ET AL.

Examiner

Shanon Foley

Art Unit

1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-15 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)),
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-6, 11 and 12, drawn to an EHV mutant comprising a mutation in the endogenous promoter region of an essential gene, a vaccine comprising the mutant and a process of preparing the mutant.

Group II, claim(s) 7-10, drawn to a nucleic acid sequence encoding an endogenous promoter region of an immediate early gene from EHV.

Group III, claim(s) 13-15, drawn to a method of attenuating EHV.

The inventions listed as Groups I-III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The special technical feature defining group I is drawn to an equine herpesvirus comprising a mutation in the endogenous promoter region of an essential gene. This group also comprises the first method of using this virus as a vaccine and a first method of making the mutant virus. Any subsequent method of making or using the first product or any subsequent product that does not share the special technical feature with group I lacks unity of invention with the first group.

The special technical feature of group II is a second product, drawn to a nucleic acid encoding an endogenous promoter of EHV. This group does not share the special technical feature with group I because the nucleic acid does not comprise the structural components or functional capabilities inherent within the mutant EHV of group I.

The special technical feature of group III is drawn to a second method of making the first product of group I. This invention lacks unity of invention with the first group because the first group comprises a first method of making the product and any subsequent method of making lacks unity of invention with the first group.

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Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shanon Foley whose telephone number is (703) 308-3983. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on (703) 308-4027. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4242 for regular communications and (703) 308-4426 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.


Shanon Foley
June 27, 2003